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6th Administrative Review
POR: 07/01/01 - 06/30/02
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April 19, 2004

TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for AD/CVD Enforcement II

SUBJECT: Ministerial and Clerical Error Allegations

RE: Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part; Period of Review (POR): 07/01/2001–06/30/2002

Background

On February 17, 2004, petitioners¹ and Pastificio Lucio Garofalo, S.p.A. (Garofalo) alleged ministerial errors in the calculations of dumping margins in the Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255 (February 10, 2004) (Final Results) with respect to Garofalo. Also on February 17, 2004, petitioners alleged a clerical error in the Final Results with respect to Rummo S.p.A. (Rummo). On February 20, 2004 we received Garofalo's rebuttal brief pertaining to petitioners' ministerial error allegations.

Definition of Ministerial Error

Section 351.224(f) of the Department's regulations defines a ministerial error as "an error in addition, subtraction, or other arithmetic function resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial."

¹Petitioners are New World Pasta Company, Dakota Growers Pasta Company, A. Zerega's & Sons, Inc. and American Italian Pasta Company.

Allegations of Ministerial and Clerical Errors

Petitioners' Allegations

A. Implementation of the Decision to Collapse Garofalo's Wheat Types 1 and 3.

Petitioners state that in the Final Results, the Department determined that the third wheat type (WHEATH/U) reported by Garofalo was not acceptable and that the Department decided to collapse Garofalo's reported wheat types 1 and 3. See Final Results and accompanying Issues and Decision Memorandum (Decision Memo) at Comment 26. Petitioners allege that the Department's calculations did not carry out this determination in several ways. First, petitioners argue that the Department mistakenly coded Garofalo's wheat types as numerical values instead of character values. Furthermore, petitioners contend that the Department altered only the WHEATH/U field in the database and failed to alter Garofalo's product control numbers (CONNUM). Finally, petitioners claim that the Department failed to calculate a single weighted-average cost for the collapsed CONNUM. See 19 C.F.R. 351.411.

Garofalo states that if the Department agrees with petitioners' allegation, the Department should ensure that it properly implements petitioners' proposed changes. Specifically, the Department must ensure that the U.S. control numbers be redefined prior to the merge with the revised constructed value data in order that all U.S. sales are assigned costs.

Department's Position: We agree with petitioners. It was the Department's intent to collapse Garofalo's wheat types '1' and '3' for the purposes of model matching in the Final Results. See Decision Memo at Comment 26. Furthermore, we also agree that a single weighted-average cost should have been calculated for the collapsed CONNUM to correctly implement our determination with respect to cost issues. We also agree with respondents that the Department must ensure that all U.S. sales are assigned costs. As a result, we have corrected these mistakes in the Amended Final Margin Program. See April 19, 2004 Memorandum to Melissa Skinner from Eric Greynolds referencing Garofalo's Amended Final Calculations (Garofalo Amended Calc Memo).

B. Application of Garofalo's G&A and Interest Expenses to the Revised Cost of Manufacture

Petitioners state that the Department adjusted Garofalo's cost of manufacture (TOTCOM) upward to account for the company's purchases of semolina from an affiliate at non-arm's length prices. See February 3, 2003 Memorandum to Melissa Skinner from Jim Terpstra referencing Garofalo's Final Calculations at attachment 1. Petitioners argue that the Department failed to recalculate G&A expenses and interest expenses based on the revised TOTCOM.

Garofalo states that petitioners are incorrect in proposing the use of the revised TOTCOM for the purposes of calculating interest expenses. Garofalo argues that the Department's practice with respect to this issue was discussed in the Issues and Decision Memorandum for the 2001-2002 Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Review, accompanying Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 69 FR 6259 (February 10, 2004) (Mexican Decision Memo). Garofalo

supports its argument by citing to the Mexican Decision Memo which explains that as G&A and interest expense are calculated based on the cost of goods sold (COGS) in the financial statements, they are not subject to changes in the cost of manufacture due to major input adjustments made by the Department. Garofalo contends that as the revision of its reported costs was due to the application of the major input rule, no revision of G&A and interest expenses is required.

Department's Position: We find that petitioners' allegation is not ministerial in nature. Petitioners are correct that Department did not revise the G&A expense ratio in the Final Margin Program; however, this was an intentional decision. The revision of G&A expenses in the Preliminary Margin Program was inadvertent, as evidenced by the lack of narrative discussion of this adjustment in the Department's cost of production and constructed value adjustment in the Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part: For the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy, 68 FR 47020 (August 7, 2003) (Preliminary Results), and the Department corrected this mistake in the Final Results. In addition Petitioners are also correct that the Department recalculated interest expenses based on the unrevised TOTCOM. This decision was also intentional and based on past practice, as noted by Garofalo. See Mexican Decision Memo at Comment 14. Moreover, the use of the revised TOTCOM in the calculation in the Preliminary Results was inadvertent, and the Department corrected this mistake in the Final Results. Therefore, the Department is not making any adjustments with respect to this allegation in the Amended Final Margin Program.

C. Calculation of Garofalo's Imputed Credit

Petitioners explain that in the Final Results the Department recalculated Garofalo's imputed credit to account for sales with a missing payment date. Petitioners state that the Department's calculation of this expense was based on gross unit price net of discounts. Petitioners argue that the Department's normal practice is to calculate imputed credit based on gross unit price net of discounts, billing and price adjustments. They further argue that Garofalo's customers do not have expenses or owe funds associated with billing and price adjustments; therefore, Garofalo does not incur any credit expense on billing and price adjustments.

Garofalo did not comment on this issue.

Department's Position: We find that the error alleged by petitioners is not ministerial in nature. Petitioners are correct that the Department did calculate Garofalo's credit expense based on gross unit price net of discounts, but not net of billing or price adjustments; however, this was an intentional decision. As this issue is methodological, the Department is not making any adjustments with respect to this allegation in the Amended Final Margin Program. Furthermore, we note that as our methodology with respect to this issue did not change from the Preliminary Results to the Final Results, petitioners had ample opportunity to address this issue in their case briefs, but failed to do so.

D. Misstatement about Rummo in the Federal Register

Petitioners state that in the Final Results, the Department found a dumping margin for Rummo of 0.94 percent *ad valorem*; however, the Final Results also states that, "We have found that Ferrara, Pagani,

Lensi and Rummo did not make sales of subject merchandise at less than normal value (NV) (*i.e.*, they had “zero” or *de minimis* dumping margins).” See 69 FR 6255. Petitioners note that a *de minimis* margin is less than 0.50 percent *ad valorem* and Rummo has a margin of 0.94 percent; therefore, the Department mischaracterized Rummo’s final dumping margin and should correct this so as to avoid any confusion or mistakes as it relates to customs liquidation instructions.

Department’s Position: The Department agrees with petitioners that the statement in the Final Results, that Rummo did not make sales of subject merchandise at less than NV, is incorrect. The Department has acknowledged this inaccurate characterization in the Federal Register notice associated with this amended final and will ensure that the correct margin rate is applied in the customs liquidation and cash deposit instructions (see Amended Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part).

Garofalo’s Allegation

A. Calculation of Dumping Margins for U.S. Sales With No Home Market Sales Matches

Garofalo states that the Department did not calculate dumping margins for all of Garofalo’s U.S. sales in the Final Results. They argue that it is the Department’s practice to rely on constructed value (CV) when no viable home market sales exist against which to compare export price. Garofalo notes that this mistake was not present in the Preliminary Results, and requests that the Department revise its margin program from the Final Results to calculate a margin on all U.S. sales.

Department’s Position:

We agree with Garofalo. As a result of other programming changes from the Preliminary Results to the Final Results, some U.S. sales were left without matching home market sales. Inadvertently, the program was not modified to correctly calculate a margin for these sales. We have corrected these mistakes in the Amended Final Margin Program.

Summary:

As a result of amending the calculations, Garofalo's total antidumping duty margin and cash deposit rate has changed in the following manner:

Producer/Exporter	Original Weighted-Average Margin	Amended Weighted-Average Margin
Garofalo	2.55 percent	2.57 percent

Recommendation:

Based on our analysis of the comments received, we recommend adopting all of the above positions.

Agree

Disagree

James J. Jochum
Assistant Secretary
for Import Administration

(Date)